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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,703	09/09/2003	Alice Marie Pebay	P08048US00/BAS	6086

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EXAMINER	
GAMETT, DANIEL C	
ART UNIT	**PAPER NUMBER**
1647	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/657,703	**Applicant(s)** PEBAY ET AL.	
	Examiner Daniel C. Gamett, PhD	**Art Unit** 1647	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on *08 January 2007*. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1,3,8-16,41,63,65,66,69-73 and 109*.
   Claim(s) withdrawn from consideration: *2,17-40,42-62,64,74-78,80,87-89,94 and 96-108*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Donna Ramey
DAVID R. ROMEO
PRIMARY EXAMINER

Continuation of 5. Applicant's reply has overcome the following rejection(s): All 112(2). 112(1) Written description of claims 1, 8, 9, 13-16, 41, 63, 66, 69-73, 109.

Continuation of 11. does NOT place the application in condition for allowance because: Rejection of claims 3, 10-12, and 65 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement is maintained. Claim 3 recites the genus "agonist of an LPL receptor" ; claims 3 and 65 recite the genus "ligand of a class III tyrosine kinase receptor". Neither genus is adequately described for reasons of record. Applicant's arguments of regarding"ligand of a class III tyrosine kinase receptor" are not persuasive because they merely assert that the genus is described.
Claims 1,8,9, 13, 14, 41, 63, 66, 69, and 70 remain rejected under 35 U.S.C. 102(e) as being anticipated by Lindquist et al., US Patent Publication No. 20040014662. The recited process steps in the instant claims require only incubating the human stem cell in the presence of an agonist of a LPL receptor. This step was taught in the reference, as noted in the rejection of record. See Bristol-Myers Squibb Co. v. Ben Venue Labs Inc., 246 F.3d 1368, 58 USPQ2d 1508 (Fed. Cir. 2001) (61 PTCJ 623, 4/27/01), where a patent for administering the anti-cancer drug paclitaxel was anticipated by a scientific article describing the same method but with no anti-tumor response. That court held that expressions of anti-tumor efficacy did not distinguish the claimed method from the prior art. The court further held that preamble language in claims of patents directed to administration of anticancer drug are expressions of purpose and intended result, and as such are non-limiting, since language does not result in manipulative difference in steps of claims. Therefore in the instant case, Applicant's assertions of an intended outcome and of a different result (inhibition vs promotion of differentiation) does not distinguish the claimed method over the prior art. .